

STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW

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In re:)
Request for Regulatory) 1998 OAL Determination No. 37
Determination filed by the)
CALIFORNIA STATE) [Docket No. 96-003]
EMPLOYEES ASSOCIATION)
regarding a DEPARTMENT OF) November 19, 1998
MOTOR VEHICLES')
administrative policy) Determination Pursuant to
concerning the failure of) Government Code Section
Department employees to) 11340.5; Title 1, California
license and register their) Code of Regulations,
vehicles) Chapter 1, Article 3
_____)

Determination by: EDWARD G. HEIDIG, Director

HERBERT F. BOLZ, Supervising Attorney
RAYMOND G. SAATJIAN, Staff Attorney
Regulatory Determinations Program

SYNOPSIS

The issue presented to the Office of Administrative Law ("OAL") is whether a policy adopted by the Department of Motor Vehicles ("Department") that, among other things, subjects its employees to adverse personnel actions for failing to comply with registration requirements of the Vehicle Code, is a "regulation" that must be adopted pursuant to the Administrative Procedure Act ("APA").

OAL has concluded that the Department policy is: (1) in part, a restatement of existing law; (2) in part, a regulation that meets the "internal management"

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exception, and therefore need not be adopted pursuant to the APA; (3) in part, a “regulation” that fails to meet the “internal management” exception to the APA, because it involves a matter of serious consequence involving an important public interest, namely the possibility of “adverse personnel actions” against Department employees.

ISSUE

The California State Employees Association (“CSEA” or “requester”)¹ requested OAL to determine whether the following was a “regulation”: a departmental policy that: (1) requires employees to comply with vehicle registration laws; (2) states that DMV parking lots will be checked to determine compliance; and (3) makes employees subject to adverse personnel actions for Vehicle Code licensing and registration violations.

CSEA, in addition, claimed that the Department has adopted a policy of discriminatory enforcement of the Vehicle Code as to the employees of the Department:

“this policy [No. 4.025] treats Department of Motor Vehicles Employees differentially than other state employees and therefore should be reviewed by the Office of Administrative Law.”²

ANALYSIS

I. IS THE APA GENERALLY APPLICABLE TO THE DEPARTMENT MOTOR VEHICLE’S QUASI-LEGISLATIVE ENACTMENTS?

For purposes of the APA, Government Code section 11000 defines the term “state agency” as follows:

“As used in this title [Title 2. Government of the State of California (which title encompasses the APA)], ‘state agency’ includes every *state* office, officer, *department*, division, bureau, board, and commission.”

[Emphasis added.]

The APA further clarifies or narrows the definition of "state agency" from that in Section 11000 by specifically excluding "an agency in the judicial or legislative department of the state government."³ The Department is in neither the judicial nor legislative branch of state government.⁴ Clearly, the Department is a "state agency" within the meaning of the APA, and unless the Department is expressly exempted from the APA,⁵ the APA is generally applicable to the Department. Since no specific exemption has been enacted, the APA is generally applicable to the Department.

II. DOES THE DEPARTMENT'S "ADMINISTRATIVE POLICY" CONTAIN "REGULATIONS" WITHIN THE MEANING OF GOVERNMENT CODE SECTION 11342?

Government Code section 11342, subdivision (g), defines "regulation" as:

"... *every* rule, regulation, order, or standard of general application *or* the amendment, supplement, or revision of any such rule, regulation, order, or standard adopted by *any* state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure [Emphasis added.]"

Government Code section 11340.5, authorizing OAL to determine whether agency rules are "regulations," and thus subject to APA adoption requirements, provides in part:

"(a) *No* state agency shall issue, utilize, enforce, or attempt to enforce *any* guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a [']regulation['] as defined in subdivision (g) of Section 11342, *unless* the guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA]. [Emphasis added.]"

In *Grier v. Kizer*,⁶ the California Court of Appeal upheld OAL's two-part test⁷ as to whether a challenged agency rule is a "regulation" as defined in the key provision of Government Code section 11342, subdivision (g):

First, is the challenged rule either:

- a rule or standard of general application, *or*
- a modification or supplement to such a rule?

Second, has the challenged rule been adopted by the agency to either:

- implement, interpret, or make specific the law enforced or administered by the agency, *or*
- govern the agency's procedure?

If an uncodified rule fails to satisfy either of the above two parts of the test, we must conclude that it is *not* a "regulation" and *not* subject to the APA. In applying the two-part test, however, OAL is mindful of the admonition of the *Grier* court:

"... because the Legislature adopted the APA to give interested persons the opportunity to provide input on proposed regulatory action (*Armistead, supra*, 22 Cal.3d at p. 204, 149 Cal. Rptr. 1, 583 P.2d 744), we are of the view that *any doubt as to the applicability of the APA's requirements should be resolved in favor of the APA*. [Emphasis added.]

A. IS THE CHALLENGED POLICY A "STANDARD OF GENERAL APPLICATION?"

Background of Policy No. 4.025

On January 28, 1985, the Director of the Department issued the following memorandum, entitled "Administrative Policy Manual (APM) Revision, 85-1":

"The attached APM revision represents a revision to departmental policy regarding registration of employee vehicles.

Effective immediately, employees whose vehicle registrations have expired, or are improperly displaying registration indicia, or are involved with fraudulent registration, will be subject to adverse personnel action and possible criminal action.

The responsibility for updating the APM belongs to the Staff Services Section, Division of Administration. Any questions or comments concerning this policy revision should be routed through channels to the Staff Services Section."⁸

The Administrative Policy Manual (APM) Revisions, 85-1, were memorialized in "PART IX-ADMINISTRATIVE POLICY. . . PERSONNEL" "Employee Registration of Vehicles," section 4.025:

"POLICY: It is the policy of this Department that all employees shall comply with the licensing and registration provisions of the California Vehicle Code.

Employee vehicles on, or in the proximity of, a DMV parking lot which are found not to be currently licensed and registered, will be subject to citation. There will be periodic checks of the parking lot and vicinity to determine compliance with this policy.

Employees whose vehicle registrations have expired, or who are found to be improperly displaying vehicle license or registration indicia, or involved with fraudulent registration, will be subject to adverse personnel action and possible criminal action."

For an agency rule to be "of general application" within the meaning of the APA, it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind or order.⁹

The challenged policy appears to apply to “all” individuals who are members of the class identified as “employees” of the Department:

“ . . . *all* employees shall comply with the licensing and registration provision of the California vehicle Code.”¹⁰ [Emphasis added.]

OAL concludes that the rule is a standard of general application that is intended to apply to all Department employees.

B. DOES THE CHALLENGED POLICY INTERPRET, IMPLEMENT, OR MAKE SPECIFIC THE LAW ENFORCED OR ADMINISTERED BY THE AGENCY OR GOVERN THE AGENCY’S PROCEDURE?

The Vehicle Code requires all registered owners of motor vehicles in California, including DMV employees and non-DMV employees, to comply with the licensing and registration provisions of Vehicle Code section 4000, Subdivision (a)(1):

“No person shall drive, move, or leave standing upon a highway, or in an off street public parking facility, any motor vehicle, trailer, semi-trailer, pole or pipe dolly, logging dolly, or auxiliary dolly unless it is registered and the appropriate fees have been paid under the code. . . .”

(1) Restatements of existing law within the challenged policy:

- (a) OAL has concluded that the portion of the challenged policy that requires employees of the Department to comply with the licensing and registration provisions of the Vehicle Code is not a “regulation.” Although it is a standard of general application, the requirement does not interpret, implement or make specific law administered by the Department. Rather the requirement simply restates the law. Such a restatement is not a “regulation,” and is not subject to the APA.
- (b) Similarly, portions of the challenged policy which relate to the practice of

citing DMV employee vehicles "which are found not to be currently licenses and registered"¹¹ is *a restatement of the existing law* which permits enforcement authorities, including municipal police, county sheriffs, California Highway Patrol, or any other entity authorized to issue citations for violations of the Vehicle Code. Such a restatement is not a "regulation," and is not subject to the APA.

- (c) And, finally, portions of the policy that suggest that "criminal action" may be the consequence for those DMV employees who engage in the "fraudulent registration" of their vehicles simply restate of Vehicle Code section 20:

"It is unlawful to use a false or fictitious name, or to knowingly make any false statement or knowingly conceal any material fact in any document filed with the Department of Motor Vehicles or the Department of the California Highway Patrol."¹²

The "possible criminal action" for the fraudulent filing of any statement with the Department, including statements submitted for vehicle registration applications, is provided in Penal Code Section 115:

"(a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony."¹³

The Department, in its response, notes that the policy is essentially a restatement of existing law that not only applies to Department employees, but to all owners of motor vehicles:

"The registration of vehicles, fraudulent use or issuance of vehicle license plate, and penalties for violations are all thoroughly addressed the Vehicle Code Sections 4000 through 9808. These code sections are applicable to *all* residents of the State of California.

"The Vehicle Code has made clear references to the registration of vehicles and penalties for failure to register. Section 4.025 of the DMV Administrative Policy Manual does not expand on the Vehicle Code nor does it introduce any aspect of vehicle registration that is not codified. Therefore, employees of the Department of Motor Vehicles are *not* subjected to more rigid vehicle registration regulations and penalties than other state employees or, for that matter, the general public." [Emphasis added.]¹⁴

(2) "Regulations" found to be part of the challenged policy:

- (a) "There will be periodic checks of the parking lot and vicinity to determine compliance with this policy."¹⁵

A departmental policy which will determine "by periodic checks of the parking lot" whether employees are registering their vehicles, is a "regulation" because it implements and makes specific the registration provisions of the Vehicle Code.

- (b) "Employees whose vehicle registrations have expired, or are found to be improperly displaying vehicle license or registration indicia, or involved with fraudulent registration, will be subject to adverse personnel action and possible criminal action."¹⁶

A departmental policy which will determine whether a departmental employee has properly displayed "vehicle license or registration indicia"¹⁷ is a "regulation" because it interprets and make specific the Vehicle Code, the result of which could lead to an "adverse personnel action" for employees who fail to comply with the Vehicle Code.

Additionally, failure of Department employees to abide by the laws they are charged with administering could be interpreted as a violation of Government Code section 19572, subdivision (t), which defines as a cause for discipline of a state employee, behavior which "discredits" the Department. Thus, the challenged rule also interprets subdivision (t).

**C. DO PARTS OF THE CHALLENGED POLICY FOUND TO BE
"REGULATIONS" FALL WITHIN ANY ESTABLISHED
GENERAL EXCEPTION TO APA REQUIREMENTS?**

Rules concerning certain activities of state agencies are not subject to the procedural requirements of the APA.¹⁸

Internal Management

The definition of "regulation" found in Government Code section 11342, subdivision (g), contains the following specific exception to APA requirements:

"'Regulation' means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, *except one which relates only to the internal management of the state agency.*" [Emphasis added.]

Grier v. Kizer provides a good summary of case law on internal management. After quoting Government Code section 11342, subdivision (b), the *Grier* court states as follows:

"*Armistead v. State Personnel Board* [citation] determined that an agency rule relating to an employee's withdrawal of his resignation did not fall within the internal management exception. The Supreme Court reasoned the rule was 'designed for use by personnel officers and their colleagues in the various state agencies throughout the state. It interprets and implement [a Department rule]. It concerns termination of employment, a matter of import to all state civil service employees. It is not a rule governing the Department's internal affairs. [Citation.] 'Respondents have confused the internal rules which may govern the department's procedure . . . and *the rules necessary to properly consider the interests of all . . . under the statutes. . .*' [Fn. omitted.]" . . . [Citation; emphasis added by *Grier* court.]

"*Armistead* cited *Poschman v. Dumke* [citation], which similarly rejected a

contention that a regulation related only to internal management. The *Poschman* court held: 'Tenure within any school system is a matter of serious consequence involving an important public interest. The consequences are not solely confined to school administration or affect only the academic community' . . . [Citation]."¹⁹

"Relying on *Armistead*, and consistent therewith, *Stoneham v. Rushen* [citation] held the Department of Corrections' adoption of a numerical classification system to determine an inmate's proper level of security and place of confinement 'extend[ed] well beyond matters relating solely to the management of the internal affairs of the agency itself [,]' and embodied 'a rule of general application significantly affecting the male prison population' in its custody"

"By way of examples, the above mentioned cases disclose that the scope of the internal management exception is narrow indeed. This is underscored by *Armistead's* holding that an agency's personnel policy was a regulation because it affected employee interests. Accordingly, even internal administrative matters do not per se fall within the internal management exception"²⁰

The internal management exception has been judicially determined to be narrow in scope.²¹ A brief review of relevant case law demonstrates that the "internal management" exception applies if the "regulation" at issue (1) affects only the employees of the issuing agency,²² and (2) does not address a matter of serious consequence involving an important public interest.²³

(1) FIRST, DO PORTIONS OF THE CHALLENGED POLICY AFFECT ONLY THE EMPLOYEES OF THE ISSUING AGENCY?

The answer to the first part of the inquiry is "yes." The reasonable inference to be drawn from a review of the Director's memorandum is that it is intended to create a policy that requires only the employees of the Department to comply with the Vehicle Code, and not employees of other state agencies.

(2) SECOND, DO THE PARTS OF THE CHALLENGED POLICY, FOUND TO BE "REGULATIONS," ADDRESS A MATTER OF SERIOUS CONSEQUENCE INVOLVING AN IMPORTANT PUBLIC INTEREST?

The answer to the second question is, in part, "Yes" as to some portions of the challenged policy, and "No" to other portions of the Administrative Policy.

- (a) A "regulation" that meets the "internal management" exception to the APA because it does not address a matter of serious consequence involving an important public interest.**

Portions of the challenged policy determined to be "regulations," such as the "periodic inspection" of Department employee vehicles in order to determine compliance with the Vehicle Code, deal only with the "internal management" of the Department. The practice of "periodically inspecting" vehicles of Department employees does *not* involve a matter of serious consequence involving an important public interest--because all owners of motor vehicles, including Department employees, should expect inspections as a part of the privilege of owning a motor vehicle. Accordingly, this portion of the challenged policy found to be a "regulation" falls within the "internal management" exception provided under the APA.

- (b) A "regulation" that does not meet the "internal management" exception because it involves a matter of serious consequence involving an important public interest.**

OAL finds that the part of the challenged policy that subjects employees to the possibility of an adverse action for registration violations to be a "regulation" that should have been, but was not, adopted pursuant to the APA. It does not meet the criteria for the "internal management" exception because adverse personnel actions could result in adjustments to the employment status of a Department employee--a matter of serious consequence involving an important public interest.

Government Code section 19570 describes the form of adverse personnel actions that could be imposed upon a Department employee who was determined to have violated the challenged policy: "As used in this article adverse action means dismissal, demotion, suspension, or other disciplinary action."

The following state agency rules have been found to involve a matter of serious consequence involving an important public interest.

The court in *Poschman v. Dumke*, found that "Tenure within any school system is a matter of serious consequence involving an important public interest."²⁴

In 1988 OAL Determination No. 3,²⁵ OAL explored the issue of whether the State Board of Control's ("Board") policy requiring psychotherapy expenses claimed at certain hourly rates to be reviewed by the Board prior to reimbursement of victims of crime under the Victims of Crime Act, was a "regulation." In that determination, one factor that clearly substantiated the existence of an "important public interest" was the Legislature's express statement of intent:

"The Legislature has clearly stated [in Government Code section 13959] that there is a public interest in assisting Californians in 'obtaining restitution for the pecuniary losses they suffer as a direct result of criminal acts.'" [Emphasis added.]²⁶

Similarly, OAL concludes that the portion of the challenged DMV policy which relates to "possible adverse actions" is invalid unless and until it is adopted pursuant to the APA.

And finally, the requester has asked OAL to determine whether the Department's vehicle registration policy, as applied, results in the discriminatory enforcement of the Vehicle Code against employees of the Department as opposed to enforcement of the Vehicle Code against employees of other state agencies. OAL has no statutory authority to consider this specific question.

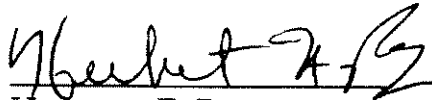
CONCLUSION

For the reasons set forth above, OAL has concluded that:

1. the APA is generally applicable to the Department.
2. portions of the challenged Policy 4.025 concerning routine compliance by Department employees with vehicle registration requirements provided in the Vehicle Code, as well as portions that provide notice to Department employees that criminal sanctions could be imposed for the fraudulent registration of a vehicle, are not "regulations" but merely restatements of existing law.
3. other portions of the challenged Policy 4.025, however, concerning the "periodic inspections" of the vehicles of Department employees to determine compliance with Vehicle Code registration requirements is a "regulation", but one that meets the "internal management" exception because it does not address a matter of serious consequence involving an important public interest and, accordingly, need not be adopted pursuant to the APA.
4. The portion of the challenged Policy 4.025 which subjects employees to the possibility of an adverse action for registration violations is a "regulation" that should have been adopted pursuant to the APA. The challenged policy does not meet the criteria for the "internal management" exception because adverse personnel actions could lead to adjustments to the employment status of a Department employee--a matter of serious consequence involving an important public interest.

5. requester's claim that the Department's challenged policy results in the discriminatory enforcement of the Vehicle Code against Department employees is beyond the statutory authority of OAL to determine.

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ENDNOTES

1. Mac Proctor, Labor Relations Specialist, California State Employees Association, 11080 "O" Street, Sacramento, CA 95814, (916) 444-8134.
2. Part IX - (Department of Motor Vehicles) Administrative Policy. . . Personnel Employee Registration of Vehicles, section 4.025.
3. Government Code section 11342.
4. See *Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120, 126-128, 175 Cal.Rptr. 744, 746-747 (Unless "expressly" or "specifically" exempted, all state agencies not in legislative or judicial branch must comply with rulemaking part of APA when engaged in quasi-legislative activities); *Poschman v. Dumke* (1973) 31 Cal.App. 3d 932, 943, 107 Cal.Rptr. 596, 60').
5. Government Code section 11346- Title 1, CCR, section 121 (a)(2).
6. (1990) 219 Cal.App.3d 422, 440, 268 Cal.Rptr. 244, 251. We note that a 1996 California Supreme Court case stated that it "disapproved" of *Grier* in part. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 577. *Grier*, however, is still good law, except as specified by the *Tidewater* court. Courts may cite cases which have been disapproved on other grounds. For instance, in *Doe v. Wilson* (1997) 57 Cal.App.4th 296, 67 Cal.Rptr.2d 187, 197, the California Court of Appeal, First District, Division 5 cited *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 107 Cal.Rptr. 596, on one point, even though *Poschman* had been expressly disapproved on another point nineteen years earlier by the California Supreme Court in *Armistead v. State Personnel Board* (1978) 22 Cal.3d 200, 204 n. 3, 149 Cal.Rptr. 1, 3 n. 3. Similarly, in *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677, 67 Cal.Rptr.2d 323, 332, the California Court of Appeal, First District, Division 4, nine months after *Tidewater*, cited *Grier v. Kizer* as a distinguishable case on the issue of the futility exception to the exhaustion of administrative remedies requirement.

Tidewater itself, in discussing which agency rules are subject to the APA, referred to "the two-part test of the Office of Administrative Law," citing *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, 272 Cal.Rptr. 886, a case which quotes the test from *Grier v. Kizer*.

7. The *Grier* Court stated:

“The OAL’s analysis set forth a two-part test: ‘First, is the informal rule either a rule or standard of general application or a modification or supplement to such a rule? [Para.] Second, does the informal rule either implement, interpret, or make specific the law enforced by the agency or govern the agency’s procedure?’ (1987 OAL Determination No. 10, *supra*, slip op’n., at p. 8.)

OAL’s wording of the two-part test, drawn from Government Code section 11342, has been modified slightly over the years. The cited OAL opinion--1987 OAL Determination No. 10--was published in *California Regulatory Notice Register* 98, No. 8-Z, February 23, 1996, p. 292.

8. Department of Motor Vehicles, Memorandum, “Administrative Policy Manual (APM) Revision 85-1, dated January 28, 1985, signed by George E. Meese, Director.
9. *Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 522. See, *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323-324 (standards of general application applies to all members of any open class).
10. Part IX - (Department of Motor Vehicles) Administrative Policy. . .Personnel Employee Registration of Vehicles, section 4.025.
11. Part IX - (Department of Motor Vehicles) Administrative Policy. . .Personnel Employee Registration of Vehicles, section 4.025.
12. California Vehicle Code section 20.
13. Penal Code section 115.
14. Department of Motor Vehicles Memorandum, Request for Determination, Subject: Docket 96-001, 96-003, by Sally R. Read, Director, Department of Motor Vehicles, dated June 17, 1998, pg. 2.
15. Part IX - (Department of Motor Vehicles) Administrative Policy. . .Personnel Employee Registration of Vehicles, section 4.025.
16. Part IX - (Department of Motor Vehicles) Administrative Policy. . .Personnel Employee Registration of Vehicles, section 4.025.
17. Part IX - (Department of Motor Vehicles) Administrative Policy. . .Personnel Employee Registration of Vehicles, section 4.025.

18. The following provisions of law may permit rulemaking agencies to avoid the APA's requirements under some circumstances:
 - a. Rules relating *only* to the internal management of the state agency. (Gov. Code, sec. 11342, subd. (g).)
 - b. Forms prescribed by a state agency or any instructions relating to the use of the form, *except* where a regulation is required to implement the law under which the form is issued. (Gov. Code, sec. 11342, subd. (g).)
 - c. Rules that "[establish] or [fix], *rates, prices, or tariffs*." (Gov. Code, sec. 11343, subd. (a)(1).)
 - d. Rules directed to a *specifically named* person or group of persons *and which* do not apply generally throughout the state. (Gov. Code, sec. 11343, subd. (a)(3).)
 - e. Legal rulings of *counsel* issued by the Franchise Tax Board or the State Board of Equalization. (Gov. Code, sec. 11342, subd. (e).)
 - f. There is weak authority for the proposition that contractual provisions previously agreed to by the complaining party may be exempt from the APA. *City of San Joaquin v. State Board of Equalization* (1970) 9 Cal.App.3d 365, 376, 88 Cal.Rptr. 12, 20 (sales tax allocation method was part of a contract which plaintiff had signed without protest). The most complete OAL analysis of the "contract defense" may be found in 1991 OAL Determination No. 6, pp. 175-177. Like *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244, **1990 OAL Determination No. 6** (Department of Education, Child Development Division, March 20, 1990, Docket No. 89-012), *California Regulatory Notice Register* 90, No. 13-Z, March 30, 1990, p. 496, **rejected** the idea that *City of San Joaquin* (cited above) was still good law.
19. *Grier* (1990) 219 Cal.App 3d 422, 436 fn.10, 268 Cal Rptr. 244, 252-253.) cites *Armistead* citing *Poschman* for support on this point. Note that *Armistead* disapproved *Poschman* on other grounds. (*Armistead, supra*, 22 Cal.3d at 204, fn. 3, 149 Cal.Rptr. 1, 583 P.2d 744.)
15. (1990) 219 Cal.App 3d 422 436, 268 Cal Rptr. 244, 252-253.
21. (1990) 219 Cal.App 3d 422 436, 268 Cal Rptr. 244, 252-253.
22. See *Armistead v. State Personnel Board* (1978) 22 Cal. 3d 198, 149 Cal.Rptr. 1; *Stoneham v. Rushen* (*Stoneham I*) (1982) 137 Cal.App.3d 729, 188 Cal.Rptr 130;

Poschman v. Dumke (1973) 31 Cal.App.3d 932, 107 Cal.Rptr.

23. See *Poschman*, supra, 31 Cal.App.3d at 943, 107 Cal.Rptr. at 603; and *Armistead*, note 34, supra, 22 Cal.3d at 203-204, 149 Cal.Rptr. at 3-4. See also 1989 OAL Determination No. 5 (Department of Corrections, Docket No. 88-007), California Regulatory Notice Register, No. 23-Z, April 21, 1989, pp. 1120, 1126-1127; typewritten version, pp. 192-193.
24. See *Poschman*, note 17, supra.
25. 1988 OAL Determination No. 3 (State Board of Control, March 7, 1988, Docket No. 87-009), California Regulatory Notice Register 88, No. 12-Z, March 18, 1988, pp. 855, 864; typewritten version, p. 10.
26. Government Code section 13959.